



United States Department of the Interior

FISH AND WILDLIFE SERVICE

6620 Southpoint Drive, South
Suite 310
Jacksonville, Florida 32216-0912

IN REPLY REFER TO:

IN REPLY REFER TO:
FWS/R4/ES-JAFL

June 5, 2006

CLEARANCE TO PROCEED WITH CONSTRUCTION ACTIVITIES ADJACENT TO BALD EAGLE NESTS - 2006 Revision

(All Development Projects within 660 feet)

All projects greater than 660 feet from a bald eagle nest tree do not need Service review.

To Whom It May Concern:

The U.S. Fish and Wildlife Service (Service) has proposed to remove (delist) the bald eagle from the list of threatened and endangered species because the bald eagle population has recovered in the lower 48 states, threats to the species have been reduced or eliminated, and reproductive success has significantly increased. In Florida, the population has tripled since 1982. As a result of this population rebound, the Service has determined that the bald eagle no longer warrants protection under the Endangered Species Act (ESA); however, the bald eagle will continue to be managed and protected by the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act.

The Service has also proposed a draft definition of the term "disturb" under BGEPA, and a companion draft document – The National Bald Eagle Management Guidelines (Guidelines) – intended to be used once the delisting occurs. These new Guidelines will take the place of the 1987 Habitat Management Guidelines for the Bald Eagle in the Southeast Region. Once the Service completes review of all the comments on the three proposed documents, which were published in the Federal Register from February 17, 2006 through June 19, 2006, a final decision will be announced along with a response to all comments received. During this interim period until delisting is completed, the Service's Florida Ecological Services Field Offices (ESFO) have decided to implement the basic framework and associated buffer zones proposed in the new Guidelines. The new guidelines are different from what has previously been implemented under ESA; only **one** buffer zone is proposed with distances reduced based on three criteria shown below. Since the protections of the ESA will no longer apply, there will no longer be a permit option under Section 10 or an Incidental Take statement within a Section 7 Biological Opinion.

Given these changes in addition to many others proposed in the Guidelines, we are interested in helping the public apply these new Guidelines. During this time, we will better identify and assess any problems in this proposed document, and provide appropriate feedback to both our Regional and Washington offices. It is also possible that after delisting, our staff may not be able to provide the same level of technical assistance to the public as we have done in the past, since BGEPA is under the jurisdiction of the Service's Migratory Birds Division and outside the Florida ESFO purview.

We suggest that you download the Guidelines on our website, and familiarize yourself with the complete document. Specifically focus on page 11 which contains the two tables (**A & B**) that apply to most projects in Florida, and then read the Glossary on page 16 for the definitions of "similar in scope", "nest", and "nest abandonment". Since many City and County governments and Water Management Districts previously required letters from the Service prior to issuing a building or clearing permit; we recommend that applicants follow the measures and recommendations outlined below when activities are proposed within 660 feet of a bald eagle's nest.

This letter provides applicants guidance and subsequent clearance to proceed with construction for the following types of activities within a bald eagle nest territory (within 660 feet from a nest tree): Please refer to Appendix 1 for the matrix table representation of the narrative text below:

1. A 660-foot no activity buffer zone shall be maintained around the nest under the following conditions: (a) building construction **at any height**, and (b) where the project footprint is **any size**, and (c) the activity **will be visible** from the nest, and (d) if there is **no** similar activity within 1 mile of the nest.

1a. If there is existing tolerated activity of similar scope **closer than 1 mile** from the nest, the buffer zone **may be adjusted to the same distance as that activity or structure occurs within the 660 feet**.

2. A 330-foot no activity buffer zone shall be maintained around the nest under the following conditions: (a) building construction of **any height**, and (b) **project** footprint is ½ acre or less, and (c) the activity **will not be visible** from the nest, and (d) there is **no** similar activity within 1 mile of the nest.

2a. If there is existing tolerated activity of similar scope **closer than 1 mile** from the nest, the buffer zone **may be adjusted to the same distance as that activity or structure occurs within the 330 feet** for any project footprint larger than ½ acre.

3. Surface water management ponds proposed from **100 feet to 660 feet** constructed during the non-nesting season. For recommendations on storm water management in the Florida panhandle, Panama City Ecological Service Field Office area of responsibility, please go to <http://www.fws.gov/panamacity/projects/stormwater.html>.

If the proposed project meets the parameters cited above, and adheres to the following protective measures, we request that local and state regulatory officials refer applicants to this letter in lieu of sending them directly to the Service for an individualized response.

During this interim period, we will continue to provide Biological Opinions to Federal Agencies for projects that qualify for Section 7 consultation when proposing any type of activity within 330 feet of a bald eagle nest that is **not** similar in scope.

There are limited exceptions to the above when an individualized Service response may be warranted. In cases where an applicant has unusual circumstances, such as an irregular or narrow lot configuration or setback restrictions necessitate a reduced buffer even if there are no other existing structures within 330 feet of the nest tree, the Service will provide a response via email.

Communication Tower Facilities and Artificial Platforms warrant special consideration regarding the recommended buffer zones above. During this transitional period, the Service will attempt to standardize recommendations for these facilities as guidance is forthcoming. All normal maintenance and construction activities associated with tower facilities shall be conducted during the non-nesting season. In those instances where emergency situations occur during the nesting season, the local field office referenced below should be contacted for further recommendations.

For all projects, we recommend that **exterior** construction activities and **site work** within 660-feet be conducted outside of nesting season (October 1 - May 15). "Site work" is defined as all infrastructure work, including roads, sewer, water, power lines, fill and excavation work for homes and buildings. We discourage heavy construction activity during the nesting period, particularly the use of dump trucks. In the event that site work and exterior building construction is unavoidable during the nesting season between 330-feet to 660-feet, the **Bald Eagle Monitoring Guidelines (September 2005)** should be initiated. These guidelines will be revised in the near future and posted on our website at <http://www.fws.gov/northflorida> to reflect changes contained in this clearance letter.

Construction between **0 – 330 feet** during nesting season should be avoided, since monitoring within this distance is not an option. **Interior** construction work may be conducted year-round without monitoring.

In many instances, young eaglets fledge and are independent of the nest (flying and feeding on their own) during late March or April. If it is confirmed that the young eaglets are independent of the nest sooner than May 15, we do not object to the initiation of site and exterior work at that time. In the event that adult bald eagles do not return to the nest tree by October 1, we do not object to the continuation of work as long as the nest site is adequately monitored. In both situations, we request that the Service be notified, so we may respond to inquiries from concerned citizens.

Lost, Inactive or Abandoned Nests – If a nest or a nest tree is lost by natural causes or storm events, we recommend that the Guidelines apply through two (2) complete breeding seasons. A nest is considered “abandoned” if it is inactive (unused) but intact or partially intact through five (5) complete breeding seasons, in which case the Guidelines no longer apply.

In summary, if an applicant follows these above-referenced recommendations, the Service believes that “take”, as defined under Section 9 of the Endangered Species Act, and “disturb” as defined under the draft BGEPA rule should not occur to the pair of bald eagles or their young, occupying the active nest in question. In the event that the applicant is unable to meet the recommendations provided in this letter, they may contact the Service directly for further guidance.

If you have any further questions, please contact one of the following individuals:

North Florida: Candace Martino via email – candace_martino@fws.gov or at (904) 232-2580, ext. 129;
South Florida: Alfredo Begazo via email – aflredo_begazo@fws.gov or at (772) 562-3909 ext. 234; or
Florida Panhandle: Stan Simpkins via email – stan_simpkins@fws.gov or at (350) 769-0552 ext. 234.

Sincerely,



David L. Hankla
Field Supervisor

Appendix 1.

Category A:

Building construction, 1 or 2 story, where the project footprint is ½ acre or less. Construction of roads, trails, canals, power lines, and other linear utilities.

Agriculture – new or expanded operations.

Alteration of shorelines or wetlands.

Installation of docks or moorings.

Aquaculture.

Category A	<i>If there is no similar activity within 1 mile of the nest</i>	<i>If there is similar activity closer than 1 mile from the nest</i>
<i>If the activity will be visible from the nest</i>	660 feet. Clearing, external construction and landscaping should be done outside nesting season. Landscaping buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside nesting season. Landscaping buffers are recommended.
<i>If the activity will not be visible from the nest</i>	330 feet. Clearing, external construction and landscaping should be done outside nesting season.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside nesting season.

Category B:

Building construction, 3 or more stories.

Building construction where the project footprint is larger than ½ acre.

Mining.

Oil and natural gas drilling and refining.

Category B	<i>If there is no similar activity within 1 mile of the nest</i>	<i>If there is similar activity closer than 1 mile from the nest</i>
<i>If the activity will be visible from the nest</i>	660 feet. Clearing, blasting, external construction and landscaping should be done outside the nesting season. Landscaping buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside the nesting season. Landscaping buffers are recommended.
<i>If the activity will not be visible from the nest</i>	660 feet. Clearing, external construction and landscaping should be done outside the nesting season.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside the nesting season.